

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

ORR WATER DITCH CO., *et al.*,

Defendants.

IN RE: Nevada State Engineer Ruling
#5826

Case No. 3:73-cv-00003-LDG
Sub-File No. 3:73-cv-00023-LDG

ORDER

The Pyramid Lake Paiute Tribe of Indians petitions (#1) this Court for judicial review of Nevada State Engineer Ruling #5826. The Tribe asserts that:

Because the State Engineer failed to first certify the availability of sufficient water to meet its existing demand, and because there is increasingly insufficient groundwater in the Fernley Area Groundwater Basin to meet the existing demand, the proposed changes of surface water rights for *new* municipal or quasi-municipal development threaten to prove detrimental to the public interest and therefore should not have been approved by the State Engineer.

The State Engineer opposes, arguing that the Tribe's arguments rest upon incorrect factual assumptions and incorrect interpretations of Nevada law. The City of Fernley, the real

1 party in interest, argues that contrary to the Tribe's allegations, its change applications did
2 not involve new development and did not have a negative effect on ground water levels.
3 Having reviewed the record and the arguments of the parties, the Court denies the Tribe's
4 petition and affirms the ruling of the State Engineer.

5 Jurisdiction

6 This Court has jurisdiction to review Nevada State Engineer Ruling #5826 pursuant
7 to the Final Decree entered in this matter, *United States v. Orr Water Ditch Co.*, Equity No.
8 A-3 LDG (D. Nev. 1944); *United States v. Orr Water Ditch Co.*, 914 F.2d 1302 (9th Cir.
9 1990) (*Orr Ditch*).

10 Standard of Review

11 State water law governs both the substance and procedure of Orr Ditch water rights.
12 *Orr Ditch*, 914 F.2d at 1307-1308. "The decision of the state engineer shall be prima facie
13 correct, and the burden of proof shall be upon the party attacking the same." Nev. Rev.
14 Stat. §533.450(9). The Court reviews question of law *de novo*, *Orr Ditch* at 1307. The
15 Court will uphold the State Engineer's findings of fact if they are supported by substantial
16 evidence. *United States v. Alpine Land & Reservoir Co.*, 291 F.3d 1062, 1071-72 (*Alpine*
17 *V.*)

18 Analysis

19 The Tribe argues that approval of Fernley's applications to change the manner and
20 place of use of surface water rights was against the public interest because the Fernley
21 Area Groundwater Basin is over-appropriated and requires the State Engineer's attention.
22 As stated by the Tribe, "[t]he crux of the [its] public interest protest of these applications is
23 that the State Engineer should not approve the proposed changes from irrigation to
24 municipal use unless and until the State Engineer analyzes, determines and certifies the
25 availability and reliability of water rights and supplies to meet Fernley's *existing* demands
26 and commitments." Opening Brief, at 9 (emphasis original). The Tribe further contends

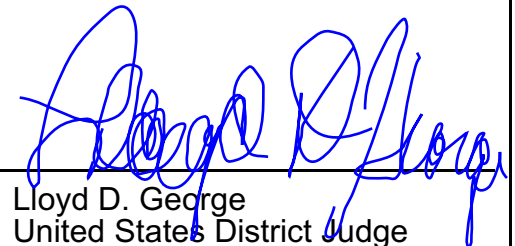
1 that “unless and until, at a minimum, the State Engineer conducts an investigation pursuant
2 to NRS 534.110(6), any change applications that are granted will threaten to prove
3 detrimental to the public interest because Fernley’s water rights should not be committed to
4 new development unless and until the State Engineer determines that sufficient water is
5 available to satisfy Fernley’s existing demands and commitments.” *Id.*, at 11. The Tribe
6 further argues that the State Engineer failed to consider, in the review of whether the
7 change applications threaten to prove detrimental to public interest, his statutory
8 obligations under §§534.030, 534.110, and 278.377(1)(b).

9 The Tribe’s arguments are without merit. Each of the change applications approved
10 in Ruling #5826 concerned surface-water rights, rather than ground-water rights. The State
11 Engineer correctly applied the criteria applicable to change applications for surface-water
12 rights. The Tribe’s argument also fails because, in Ruling #5826, the State Engineer
13 specifically found “that when each subdivision of land was approved a determination was
14 made, pursuant to NRS chapter 278, that sufficient water resources existed for that
15 subdivision.”

16 Therefore, for good cause shown,

17 THE COURT **ORDERS** that the Pyramid Lake Paiute Tribe of Indians’ Petition for
18 Review of Nevada State Engineer Ruling No. 5826 (#1) is DENIED.

19
20 DATED this 26 day of November, 2012.

21
22 
23 Lloyd D. George
24 United States District Judge
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